STATE OF MICHIGAN

COURT OF APPEALS

VINCENT DESANTO,

Petitioner-Appellant,

v

TOWNSHIP OF NORTHVILLE,

Respondent-Appellee.

UNPUBLISHED
March 14, 2006

No. 258430
Tax Tribunal
LC No. 00-297976

Before: Schuette, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Petitioner appeals as of right from the Tax Tribunal's decision determining the taxable value of petitioner's property for purposes of the 2003 and 2004 property tax assessments. Because the Tax Tribunal properly found that the true cash value ("TCV") of new construction is not its cost-plus profit, but rather is the increase in the FMV of the property attributable to the new construction, and because the Tax Tribunal erred when it used a methodology that failed to remove increases in TCV attributable to other factors, we affirm in part, reverse in part, and remand for further proceedings.

I

Petitioner purchased vacant land in Northville Township (the "township") for $75,000 in 2000. For the 2001 tax year, the fair market value ("FMV") of the land was determined to be $78,800, and its state equalized value ("SEV") was capped at $39,400 (half the FMV). In 2001 and 2002, petitioner built a 5,854-square-foot home on the land. The total cost of construction was $775,508. Petitioner spent $287,849 in 2001, and $487,659 in 2002. In 2003, petitioner added a $10,000 patio to the home.

Respondent did not assess petitioner's property in 2001. Rather, it assessed the property at the end of 2002 when construction was substantially complete. Using appraisals of three comparable properties respondent calculated that, after the house was completed, the TCV of petitioner's property was $1,595,000. Respondent determined that, for the 2003 tax year, the SEV of the property would be $845,200, and its taxable value would be $831,191.

In 2004, respondent returned to petitioner's property and discovered a finished area above the garage resulting in 1,324 additional square feet, which was not previously assessed. As a result, respondent recalculated the TCV of the home as $1,877,900, resulting in an SEV of

$938,950 for 2003, and a taxable value of $840,391. Nonetheless, respondent admitted that "[t]he appraisal submitted used the corrected square footage and supported a fair market value of $1,595,000." For 2004, respondent determined that the taxable value of the property was $859,719, not including half of the $10,000 patio.

In June 2003, petitioner appealed the assessment to the small claims division of the Tax Tribunal, arguing that the TCV and the taxable value determined by respondent were too high. Instead, petitioner argued, the TCV of new construction should be its "cost" plus a 12 percent profit margin. After a hearing, the Tax Tribunal issued an opinion and judgment rejecting petitioner's cost-plus profit calculations to determine the TCV of new construction as unsupported by authority and "grossly understat[ing]" its value. Conversely, the Tax Tribunal found respondent's calculation of the TCV by using a fair market value comparison approach was "a reasonable method that is lawful, fair, defensible and consistent." However, the tribunal found that allowing respondent to claim a TCV of $1,877,900 would be contrary to its own $1,595,000 appraisal. Thus, the tribunal reduced the TCV of the whole property to respondent's original appraisal of $1,595,000 and then deducted the $78,800 FMV of the land in 2001, reaching a TCV of $1,516,200 for the new construction.

The tribunal recognized that the new construction cost petitioner $287,849 in 2001, and $487,659 in 2002, for a total of $775,508. Based on those relative costs, the tribunal determined that 37 percent of the construction was completed in 2001, while the remaining 63 percent was completed in 2002. The tribunal found that the taxable value of petitioner's property should be apportioned in the same ratio as petitioner's construction costs, 37 percent in 2001, and 63 percent in 2002. Petitioner was also "entitled to have the taxable value of the 2001 addition . . . capped for the 2003 tax year at 1.5 percent." The remaining 63 percent taxable value "is uncapped for the 2003 tax year."

Based on the TCV of $1,516,200 for the new construction, the Tax Tribunal determined the 2003 taxable value of the property as follows:

$39,400	(2002 taxable value of the land, CPI adjusted)
$280,497	(½ of the value of the 37 percent completed addition)[1]
$4,207	(1.5 percent CPI of the 2002 addition)
<u>$477,603</u>	<u>(½ of the value of the remaining 63 percent addition)[2]</u>
$801,707	Total 2003 taxable value.

For the 2004 assessment, the taxable value of the property increased by $5,000 (half of the $10,000 patio), plus $18,439 (1.5 % CPI), for a total of $23,439. Therefore, the tribunal concluded that the total 2004 taxable value of petitioner's property was $825,146 ($801,707 + $23,439). The Tax Tribunal reduced the 2003 SEV of the property to $797,500, based on

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[1] ($1,516,200 x .37) x .5 = $280,497.

[2] ($1,516,200 x .63) x .5 = $477,603.

respondent's $1,595,000 estimate. The 2004 SEV of the property was reduced, accordingly, to $820,843, based upon a TCV of $1,641,685. This appeal followed.

II

At issue in this case is the proper calculation of the TCV of petitioner's newly constructed home in light of MCL 211.27a, for the purpose of determining the taxable value of his property for his 2003 and 2004 assessments. It is petitioner's position that the cost of the home, plus a reasonable margin of profit, i.e. a "cost-plus" method should be employed. Respondent asserts that the fair market value ("FMV") of the home must be used to determine the taxable value of the property. The Tax Tribunal found that petitioner's cost-plus approach to calculating TCV was inappropriate and that respondent's "method of calculating [TCV] by using the market/comparison approach, is a reasonable method that is lawful, fair, defensible and consistent."

Issues concerning the interpretation of tax statutes are questions of law to be reviewed de novo. *Danse Corp v Madison Hts*, 466 Mich 175, 178; 644 NW2d 721 (2002). "In the absence of fraud, review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material and substantial evidence on the whole record." *Michigan Bell Tel Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994). However, "ambiguities in the language of a tax statute are to be resolved in favor of the taxpayer." *Id.* at 477.

In pertinent part, Const 1963, art IX, § 3, as amended by Proposal A, provides:

> The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments. *For taxes levied in 1995* and each year thereafter, the legislature shall provide that the *taxable value* of each parcel of property *adjusted for additions* and losses, *shall not increase each year by more than the increase in the immediately preceding year in the general price level*,[3] as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. [Emphasis added.]

Thus, Proposal A limits increases in property taxes, absent transfers in ownership, "by capping the amount that the 'taxable value' of the property may increase each year, even if the 'true cash value' of the property rises at a greater rate." *Kok v Cascade Charter Twp*, 255 Mich App 535,

[3] The "general price level" is defined as the consumer price index ("CPI") published by the United States Department of Labor. Const 1963, art IX, § 33. The State Tax Commission ("STC") has published a list of CPI inflation rate multipliers for every tax year since Proposal A was adopted. See STC Bulletin No. 13 of 2004, available at www.michigan.gov/treasury.

539; 660 NW2d 389 (2003), quoting *WPW Acquisition Co v Troy*, 466 Mich 117, 121-122; 643 NW2d 564 (2002).

However, the taxable value of property may be adjusted by "additions," as provided in the capped value formula of MCL 211.27a:

> (1) Except as otherwise provided in this section, property shall be assessed at 50% of its *true cash value* under section 3 of article IX of the state constitution of 1963.
>
> (2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the *taxable value* of each parcel of property is the lesser of the following:
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> (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, *plus all additions*. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.
>
> (b) The property's current state equalized valuation. [Emphasis added.]

For purposes of the capped value formula, § 27a(11)(a) incorporates the definition of "additions" provided in § 34d(1)(b)(iii):

> (b) For taxes levied after 1994, "additions" means, except as provided in subdivision (c), all of the following:
>
> * * *
>
> (iii) New construction. As used in this subparagraph, "new construction" means property not in existence on the immediately preceding tax day and not replacement construction. New construction includes the physical addition of equipment or furnishings, subject to the provisions set forth in section 27(2)(a) to (o). *For purposes of determining the taxable value of property under section 27a, the value of new construction is the true cash value of the new construction multiplied by 0.50*. [Emphasis added.]

Thus, both the taxable value of property, and the value of an addition depend on their TCV.

MCL 211.27(1) defines "true cash value" as "the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at a forced sale." See also *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974) (TCV is synonymous with fair market value). Section 27 unambiguously disposes of petitioner's cost-plus argument. As such, we conclude that the Tax Tribunal did not err in rejecting petitioner's method of calculating TCV for the reason that it did not represent the actual market value of the subject property and in fact, "grossly understated" the actual market value of the property according to the Tax Tribunal's findings of fact.

III

Petitioner additionally argues that § 27a allows additions to taxable value only to the extent that TCV increases as a result of new construction. Petitioner specifically asserts that, even if his cost-plus valuation approach is rejected, the Tax Tribunal's method fails to exclude other factors that affect the TCV of property from its taxable value calculations, such as market forces. Respondent avers that the method employed by the Tax Tribunal properly ensures that petitioner was taxed only on the increase in value attributable to the new construction when it subtracted the value of the land.

To support his argument, petitioner relies on *Kok, supra*. Like the present case, *Kok* involved the construction of a new home on a vacant parcel over a two-year period. *Kok*, *supra* at 541. In *Kok*, the township assessed the fair market value of the partially completed home at the end of the first year, assessed the remainder of the construction at the end of the second year, and added the two amounts in order to determine the TCV of the completed home. *Id.* at 537-538, 541. Finding this procedure improper, the *Kok* Court stated that "[n]othing in the language of subsection 27a(2)(a) provides an exception to this formula for new construction that is partially completed (and has a taxable value assessed) in one tax year and is fully completed in a subsequent year." *Kok, supra* at 543; see also *Kok v Cascade Charter Twp (After Remand)*, 265 Mich App 413; 419; 695 NW2d 545 (2205). The *Kok* Court also stated that "[n]othing in the language of subsection 34d(1)(b)(iii) supports the tribunal's finding that the taxable value of an addition, including new construction, can be determined by 'treating as new construction the difference in the value of the house as completed at December 31, 1999, and the value of the partially completed house at December 31, 1998." *Id.* Instead, "[t]he portion of the house that was not completed at the time the property was assessed for the 1999 tax year and that was not included in the assessment of the taxable value of the property falls within the meaning of 'addition' for purposes of determining the taxable value of the property for the 2000 tax year." *Kok*, *supra* at 543. Under § 27a, "the taxable value of the property for the 2000 tax year is the lesser of the 1999 taxable value multiplied by the lesser of 1.05 or the inflation rate, 'plus the true cash value of the new construction multiplied to 0.50.'" *Id.* But, the Court presciently warned that "[a] different situation would be presented if respondent had not assessed the FMV and the taxable value of the partially constructed house for the 1999 tax year," *id.* at 543 n 3, which is the scenario before us in the instant matter because respondent did not assess petitioner's property mid-construction in 2001.

Because *Kok* is distinguishable on its facts, we turn to the Tax Tribunal's decision in *Medwid v Twp of West Bloomfield*, MTT, Docket No. 226142; 199 WL 284157 (1999)[4] which involved a new home built over a five-year period, where the progress of construction was expressed as a stipulated percentage of cumulative completion, but where specific construction

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[4] The Tax Tribunal designated its decision in *Medwid*, *supra*, as "precedential for defining 'new construction' as an 'addition' in the computation of taxable value, pursuant to MCL 211.27a(2) and MCL 211.34d(1)(b)(iii)." *Medwid*, *supra* at 1; MCL 205.765 ("A decision of the division is not a precedent unless so designated by the tribunal.").

costs were not in evidence. *Id*. at 1, 3-4, 15. There was, however, evidence of yearly comparison data concerning the fair market value of the home. *Id*. at 1, 3, 6. There was also evidence of the fair market value of substantially similar structures in various locations. *Id*. at 7-8. The Tax Tribunal was particularly concerned with developing a method of determining and allocating the TCV of new construction spanning more than one tax year that would exclude the FMV value added to the property by other factors, such as market changes. *Id*. at 3, 26-27. The tribunal found that "[i]t is clear that merely deducting one year's value from the other will report differences from all causes of true value cash increase, not just that of new construction." *Id*. at 27. Doing so would be contrary to the clear mandate of §§ 27a and 34d(1)(b)(iii). *Id*. at 3, 26-27. Accordingly, the tribunal developed a lengthy calculation to eliminate other factors and isolate the TCV of each year's new construction, in order to use that figure to calculate taxable value under § 27a. See *id*. at 20-30. A "short version" of the calculation was also developed, achieving identical results. *Id*. at 30-32.

The tribunal calculated the fair market value of the land alone for each year in question warning that the stipulated percentages of completion applied to the new construction only, and should not be applied to the value of the land or to site improvements. *Medwid*, *supra* at 15. The tribunal then engaged in an exhaustive review of comparable sales data, adjusting for location, square footage, overimprovements, and many other factors, to arrive at the unadjusted TCV of the entire property for each year under review, given the home's state of completion for that particular year. See *id*. at 16-21.

In calculating taxable value using the capped value formula, the tribunal again noted that "only the true cash value of the new construction (at 50 percent), and not the market gain from prior improvements, may be added to the previous year's taxable value as multiplied by the rate of inflation." *Medwid, supra* at 22. The tribunal observed that § 27a "clearly permits only recognition of the true cash value for qualified construction new to the current tax year." *Id*. at 26. "True cash value increases from other causes, or from prior years, are to be excluded from current new construction as an addition in the taxable value formula." *Id*. To calculate the true cash value of new construction for any given year, the tribunal began with the unadjusted TCV of the entire property for that year, as obtained from market comparisons, and subtracted the FMV of the land for that year, the cost of site improvements, and the value of the old residence (which was eventually torn down), for each year it remained standing. *Id*. at 28. The result was the net TCV of the home for each year, given its particular percentage of completion at that time. *Id*. The tribunal then converted those figures to the net TCV of the home "as if 100% complete, by dividing each figure with its respective percent of completion." *Id*.

Next, the tribunal calculated the percentage of completion change from one year to the next. *Medwid*, *supra* at 30. The tribunal then multiplied the percentage change from the previous year by that year's net TCV as if complete. *Id*. The result of that equation is the TCV attributable to that year's new construction *only*, not market changes, or any other impermissible factors. *Id*. at 31. The taxable value of the property is then calculated using the capped value formula provided in § 27a. *Id*. at 30-31. Under § 27a, the prior year's taxable value, minus any losses, is multiplied by the published CPI inflation rate or 1.05, whichever is lower, and added to *half* of that year's TCV attributable to new construction, as provided in § 34d(1)(b)(iii). *Id*. at 31. The taxable value of the property is either the result of the capped value calculation, or, *if lower*, half of that year's unadjusted TCV for the entire property. *Id*. Taxable value "must not be rounded up," but can be rounded down. See State Tax Commission Bulletin No. 3 of 1995, p 4; see also *Medwid*, *supra* at 31.

Under substantially similar facts, without discussing *Medwid*, the Tax Tribunal in the present case calculated petitioner's 2003 and 2004 assessments by apportioning the FMV of the property (minus the FMV value of the land as determined for the 2001 tax assessment) over the years when the construction took place (2001 and 2002), and making a separate capped value calculation for the $10,000 patio built in 2003. In this exercise, the tribunal did not recognize that the FMV of the property improperly included value added by the market and other factors that, which under §§ 27a and 34(d)(1)(iii), cannot be considered in determining the taxable value of the property. Therefore, the record supports petitioner's argument that the 2003 and 2004 assessments tax petitioner for value not attributable to new construction and thus, the Tax Tribunal's decision must be reversed in part and remanded for further proceedings. On remand, we direct the Tax Tribunal to engage in the appropriate calculations set out in *Medwid* and illustrated in Appendix A to this opinion.[5]

With regard to the appropriate resolution of petitioner's challenge to the 2003 and 2004 assessments, on remand, the Tax Tribunal must be mindful that

> petitioner has the burden of proof in establishing the true cash value of the property. The assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question. [MCL 205.737(3).]

Thus, to the extent that the evidence introduced below is insufficient to fully perform *all* of the *Medwid* calculations, petitioner has failed to carry his burden of proof and the assessments should stand, as modified under *Medwid*.

IV

Petitioner finally argues that new construction that took place in 2001 must be treated as omitted property for purposes of the 2003 tax assessment. Petitioner first raised the argument in his post-hearing brief which the Tax Tribunal rejected. Since the Tax Tribunal did not consider

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[5] While not addressed by the parties, we note that the tribunal improperly used a CPI of 1.5 in its calculations—a figure that first appears in the petition for review. That figure is larger that the published CPI for the years at issue, and is also substantially higher than the 1.05 maximum alternatively allowed by § 27a. The published CPI was 1.032 in 2001 and 2002, 1.015 in 2003, and 1.023 in 2004. See 2004 STC Bulletin No. 13.

this issue, we decline to address this issue for the first time on appeal.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Bill Schuette
/s/ Christopher M. Murray
/s/ Pat M. Donofrio

APPENDIX A

Summary of Capped Value Calculation for Multi-Year New Construction

1. Calculate the FMV of land (alone) for each year.

2. Calculate the unadjusted TCV of the entire property for each year, given its then-existing percentage of completion.

3. Adjust the TCV for each year by subtracting:
   the FMV of the land (alone)
   cost of any site improvements
   value of the old home (if it remains)
   = Net TCV at that percentage of completion.

4. To obtain the net TCV "as if complete," divide the net TCV (#3) by that year's percentage of completion (expressed as a decimal).

5. Calculate the change in the percentage of completion from the previous year by subtracting the previous year's percentage of completion.

6. Multiply the net TCV "as if complete" (#4) by the change in the percentage of completion (#5) to obtain the TCV attributable only to new construction.

7. The taxable value of the property is the lesser of (a) or (b):

   a. (last year's taxable value - losses)
      multiplied by (CPI or 1.05, whichever is lower),
      plus ½ of TCV attributable to new construction (#6),

   or

   b. ½ of unadjusted TCV for the entire property (#2) = current SEV.